

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MICHAEL C. WORSHAM

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Plaintiff

*

VS.

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Case 1:20-cv-00008-RDB

DISCOUNT POWER, INC.

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Defendant

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**PLAINTIFF’S MOTION TO COMPEL ARMSTRONG
TELECOMMUNICATIONS, INC. TO RESPOND FULLY TO SUBPOENA**

Plaintiff Michael C. Worsham moves for a Court Order compelling non-party Armstrong Telecommunications, Inc. (“Armstrong”) to respond fully to his Subpoena for telephone records related to his home telephone number that Worsham received the telemarketing calls at issue in this suit. Armstrong has responded, but a small amount of important information requested in the Subpoena was not provided.

BACKGROUND

1. The Complaint (ECF 1-2) (removed on January 2, 2020) alleges in ¶ 9 on pages 2-4 (see concise list on p. 5) that Worsham received 7 calls from Defendant for which the Caller ID information was spoofed (faked).
2. Worsham alleges that all 7 calls were made to his home residential number 410-692-2749 from November 11 through 15, 2019. *Id.* at p. 5.
3. On April 6, 2020 the Clerk issued a Subpoena to Armstrong, as ECF #23-1.
4. On April 6, 2020 Worsham served the Subpoena on Armstrong, by both U.S. mail and emailing it to Subpoena@agoc.com, the email address Armstrong identifies as the one for serving subpoenas. *See* April 6, 2020 Worsham letter to Armstrong, attached as Exhibit 1 herein.

5. On April 30, 2020 Worsham received a response dated April 27, 2020 from Armstrong, in documents including the Subpoena, attached as Exhibit 2 herein.
6. On May 1, May 4, and May 12, 2020 Worsham called and emailed Armstrong, to follow up on its response and to understand some terms (Metaswitch XML, Perimea, NT EMI) in the first column of the list of data in Armstrong's response. A copy of Worsham's May 12, 2020 email to Armstrong demonstrating these email attempts is attached as Exhibit 3 herein. Worsham also tried to fax Armstrong at the 866-490-7294 fax number on the bottom of Armstrong's response (Exhibit 1), but a fax would not go through to that fax number.
7. Armstrong has not responded to any of Worsham's recent communications.
8. On May 13, 2020 the Court granted the parties' consent Motion for an Extension of Time for Defendant to file a response to the Complaint, in an Order, ECF #25.
9. On May 15 and 18, 2020 Worsham emailed defense counsel a draft of this Motion seeking consent to the relief sought herein, but has received no response.

ARGUMENT

10. The Subpoena to Armstrong concerns Worsham's home number 410-692-2749 which he has subscribed to through Armstrong continuously for over 6 years.
11. The important part of the Subpoena and focus of this Motion is the request for records identifying all carriers for calls to 410-692-2749 on the dates that Worsham alleges he received calls from the Defendant in ¶ 9 of the Complaint (ECF 1-2).
12. Armstrong's April 27, 2020 response identifies in the first column (titled "**Source**") of the list of calls, certain terms (codes or names) with the words Metaswitch XML, Perimeta, and Verizon EMI. *See* Exhibit 2 at page 2, left hand side.

13. Worsham needs Armstrong to explain what these new terms in its **Source** column mean. Even for the term Verizon EMI, Worsham needs to know if, as it appears to be the case that this term refers to a Verizon-related company, whether this refers to Verizon's land line division, or Verizon Wireless, or perhaps another entity, as these are different companies with different subpoena response (aka security) offices.
14. Worsham has made both timely and repeated attempts to get Armstrong to explain its **Source** terms, but has not received a response.
15. The need for Armstrong to explain its **Source** terms is even more important, because of defense counsel's difficulty in getting to his office due to COVID, and resulting difficulty in being able to investigate the calls from the defense end. Calls can be investigated backwards from the recipient, as Worsham is attempting (aka a "traceback"), or investigated going forward starting from the caller (the defendant or their agent). Currently COVID is limiting the parties' collective attempts to investigate from the sender end, according to defense counsel representations to the Court.
16. This specific call information sought by Worsham is not protected information, as it is only the name of a company that carried/transmitted a portion of a phone call.
17. This specific call information sought by Worsham is not burdensome for Armstrong to provide, and should only require a simple email or letter, or a short phone call.
18. Evidence proving (or disproving) that the alleged calls were made or initiated by Defendant or one of its telemarketers or lead generators, is a very important and relevant part of this case, including for use by the parties in settlement negotiations.
19. Worsham requests that the Court require Armstrong to explain its **Source** terms, and provide complete contact information for any company associated with these terms.

WHEREFORE the Court should grant this Motion to Compel Armstrong Telecommunications, Inc. to Respond Fully to Subpoena. A proposed Order is provided.

Respectfully submitted,

/s/ Michael C. Worsham

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**Plaintiff's Local Rule 104.7 Certificate for Motion to Compel
Armstrong Telecommunications, Inc. to Respond Fully to Subpoena**

One May 19, 2020 Plaintiff Worsham served the attached Motion to Compel non-party Armstrong Telecommunications, Inc. ("Armstrong") to respond fully to his Subpoena for telephone records related to his home telephone number that Worsham received the telemarketing calls at issue, and all Exhibits therein, Exhibit 3 of which demonstrate his attempts to obtain a response from Armstrong during May of 2020.

Plaintiff's attempts included calls to Armstrong on May 1, 4, and 12, 2020, and emails on May 4 and 12, 2020, to try to discuss Armstrong's response dated April 27, 2020, and two separate voice messages on May 1, 4, and 12, 2020 during the late afternoon. I also attempted on May 1 or 4, 2020 to fax a request to Armstrong to the 866-490-7294 fax number on the bottom of Armstrong's response (Exhibit 2 herein), but a fax would not go through to that fax number. On May 15 and 18, 2020 I contacted counsel for Defendant Discount Power, Inc. to the relief sought in this Motion, but have received no response.

/s/ Michael C. Worsham

Michael C. Worsham

CERTIFICATE OF SERVICE

On May 19, 2020 this Motion document was filed electronically through the Court's ECF system, and will also be emailed and mailed to Armstrong Telecommunications, Inc., One Armstrong Place, Butler, PA 16001, Subpoena@agoc.com.

/s/ Michael C. Worsham

Michael C. Worsham